IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 388 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANJAR MUNICIPALITY

Versus

DEVABHAI BHACHUBHAI HARIJAN

Appearance:

1. First Appeal No. 388 of 2003

MR YS MANKAD for Petitioner No. 1

MR SURESH M SHAH for Respondent No. 1-4

MR MEHUL S SHAH for Respondent No. 1-4

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 29/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

By filing instant appeal under Section 30 of the Workmens' Compensation Act, 1923, the appellant has challenged judgement and award dated July 22, 2002 rendered by the Commissioner appointed under the provisions of the Workmens' Compensation Act and the Labour Judge, Bhuj (Kachchh) in Workmens' Compensation (Fatal) Case No.61 of 1996, by which the appellant Municipality is directed to pay a sum of Rs.80,175/- as compensation with 6% interest from the date of accident till realisation and penalty worked out at the rate of 50% of the amount of compensation to the respondents No.1 to 4.

2) It is the case of respondents No.1 to 4 that deceased Naran Devabhai was employed by the appellant Municipality and was working as a worker for constructing a road. The accident in question took place on July 3, 1991 when the deceased who was carrying tar was kicked by a horse near Ganga Naka of Anjar town. According to the respondents No.1 to 4 because of the kicks given by horse, the deceased had received serious injuries on head as well as chest and was removed to hospital, where he succumbed to the injuries. The case of the respondents No.1 to 4 was that the accident had taken place in the course of employment with the appellant and that the appellant was liable to pay compensation in accordance with the provisions of Workmens' Compensation Act, 1923. Therefore, they had served a notice dated March 11, 1992 calling upon the appellant to make payment of compensation. However, the notice was not responded to by the appellant. Under the circumstances, the respondents No.1 to 4 instituted Workmens' Compensation (fatal) Case No.128/1993 in the Court of learned Civil Judge (S.D.) Bhuj and claimed compensation of Rs.1,44,360/-.

3) The judgement which is impugned in the appeal indicates that though the appellant had appeared through its learned counsel, no written statement was filed nor the respondent No.1, who was examined on behalf of the respondents was cross-examined. It is also evident from the record that by passing an order below Exh.25 the defence of the appellant was struck off and application submitted by the appellant at Exh.27 to recall the witness examined on behalf of respondents No.1 to 4 for cross-examination was rejected. Ultimately, the learned Commissioner appointed under the provisions of the Workmens' Compensation Act and Labour Judge, Bhuj

(Kachchh) has directed the appellant to pay a sum of Rs.80,175/- as compensation with 6% interest from the date of accident and penalty at the rate of 50% of the amount awarded, by the impugned judgement and award, giving rise to the instant appeal.

4) The main ground of challenge advanced is that sufficient opportunity to defend the case was not given to the appellant and therefore after setting aside the impugned award, the matter should be remitted for re-trial on merits. According to the learned counsel of the appellant, after the petition was filed by the respondents No.1 to 4 claiming compensation in the Court of learned Civil Judge (S.D.) Bhuj, the case was transferred to the Court of learned Judge, Labour Court, Rajkot from which the case was re-transferred to the Court of learned Judge, Labour Court, Bhuj (Kachchh) for trial and though the other cases were transferred to the Court of learned Judge Labour Court, Gandhidham because of establishment of Labour Court at Gandhidham, this case was not transferred to Gandhidham Court and the learned Judge of Labour Court at Bhuj had proceeded ex-parte by recording evidence of the witness of the claimants and, therefore, the application which was submitted at Exh.27 for recalling the witness to enable the appellant to cross examine him and to transfer the case to Labour Court, Gandhidham for trial should have been allowed. What was emphasised on behalf of the appellant was that on January 26, 2001 massive earthquake had shattered the whole Kachchh region including Anjar town and as the office of the Chief Officer of appellant Municipality was also heavily damaged, the case could not be defended properly and therefore, the impugned award should be set aside and opportunity should be afforded to the appellant to contest the case on merits. It was also claimed that the office of the advocate of appellant Municipality, Mr.S.D.Chhaya had also completely collapsed and as he was unaware about the hearing of the case, he could not defend the appellant-Municipality and therefore also the impugned award should be set aside. According to the learned counsel of the appellant, the award impugned in the appeal is rendered without jurisdiction and therefore the appeal should be accepted.

5) Mr.M.S.Shah, learned counsel of the respondent pleaded that sufficient opportunity having been afforded to the appellant, the appeal should not be accepted and the award impugned should be upheld by the Court. What was maintained on behalf of the claimants was that after service of summons, the appellant had not taken steps to defend the case and therefore, further opportunity of

defending the case after lapse of long time should not be granted to the appellant. It was argued that a just award has been rendered by the Commissioner for Workmens' Compensation and the appeal should be dismissed.

6) We have considered the submissions advanced at the bar and the record of the case. From the record of the case, it is evident that initially the claim petition was filed by the respondents in the Court of learned Civil Judge (S.D.) Bhuj (Kachchh). Thereafter, the learned Judge Labour Court at Rajkot was authorised and empowered to try the cases arising under the provisions of Workmens' Compensation Act. Therefore, the case instituted by respondents was transferred to the Court of learned Judge, Labour Court, Rajkot for trial. However, before the case could be disposed of, a sitting of the Labour Court at Bhuj was arranged and therefore, the case was re-transferred to the Court of learned Judge Labour Court, Bhuj from the Court of learned Judge, Labour Court, Rajkot. The record further shows that on permanent basis sitting of Labour Court was arranged at Gandhidham also. Therefore, the cases subject matter of which were arising from the towns of Gandhidham, Anjar and Bhachau were transferred to the Court of learned Judge, Labour Court at Gandhidham.

7) The accident in question had taken place in Anjar town and therefore this case also should have been transferred to Labour Court, Gandhidham. But due to inadvertence, the same was not transferred and the Labour Court, Bhuj (Kachchh) had proceeded to decide the matter on merits. The record further shows that after the evidence of witness examined by the respondents was over, the appellant had come to know that the case was going on in the Labour Court, Bhuj (Kachchh) and therefore had submitted an application at Exh.27 on October 19, 2000 requesting the Court to recall the witness examined by the respondents to enable the appellant to cross-examine him and transfer the case to Labour Court, Gandhidham. The order passed below Exh.27 indicates that same was dismissed in absence of learned advocate of the appellant, on January 31, 2002. The narration of abovereferred to facts would indicate that sufficient opportunity was never afforded to the appellant to defend the case on merits. It is relevant to notice that after submission of application at Exh.27 on October 19, 2000, devastating earthquake had taken place on January 26, 2001 and therefore, the claim advanced by the appellant that the advocate could not remain present before the Court because his office had collapsed, deserves to be accepted. Moreover, in view of what was stated in

application at Exh.27, the case should have been transferred to Labour Court Gandhidham but the labour Court, Bhuj had proceeded ex-parte and decided the same. The reason for nonappearance of the learned advocate of the Municipality at the time of hearing of the case has been completely overlooked by the Commissioner for Workmens' Compensation. On the facts and in the circumstances of the case, this Court is of the opinion that the award, which is impugned in the appeal, was passed without affording sufficient opportunity to the appellant to defend the case and therefore the appeal deserves to be allowed.

8) For the foregoing reasons, the impugned award is set aside. The matter is remitted to Labour Court, Gandhidham for re-trial on merits. It may be stated that the accident in question had taken place on July 3, 1991 and therefore the Labour Court is directed to dispose of the case on merits after affording opportunity of being heard to the parties as early as possible and preferably on or before December 31, 2003. Having regard to the facts of the case, the appellant - Municipality is directed to pay Rs.1,000/- as costs to the respondents. The learned Commissioner for Workmen's Compensation and Labour Judge, Bhuj (Kachchh) is directed to refund the amount deposited by the appellant in Workmen's Compensation (Fatal) Case No.61 of 1996 immediately. The office is directed to send writ as well as R & P to Labour Court, Gandhidham forthwith.

9) Appeal accordingly stands allowed to the extent indicated hereinabove.

(J.M.Panchal, J.)

(S.D.Dave, J.)

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